

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 13, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DOUGLAS BENSON,

Plaintiff,

v.

CLAYTON MYERS, DARREN
HIGASHIYAMA, and LAURA
KUKES,

Defendants.

NO. 1:24-CV-3211-TOR

ORDER DENYING AS MOOT
MOTION TO DISMISS

BEFORE THE COURT is Defendants' Joint Motion to Dismiss for Failure to State a Claim or to Abstain (ECF No. 5). Plaintiff requests oral argument on this motion. ECF No. 15 at 1. The Court has reviewed the record and files herein and is fully informed. The Court concludes oral argument is not necessary. For the reasons discussed below Defendants' motion (ECF No. 5) is **DENIED as moot.**

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DISCUSSION

Plaintiff filed his original Complaint on December 23, 2024 (ECF No. 1). Defendants' jointly filed the current motion before the Court to dismiss those claims laid out in the original Complaint on January 15, 2025. ECF No. 5. However, Plaintiff then filed an Amended Complaint on February 4, 2025. ECF No. 14. Defendants filed a new Joint Motion to Dismiss or Abstain (ECF No. 16) and now explain that the first motion to dismiss (ECF No. 5) is now moot. ECF No. 17 at 2.

It is "well-established doctrine that an amended pleading supersedes the original pleading." *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). "[A]fter amendment the original pleading no longer performs any function and is 'treated as non-existent.' " *Id.* (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)). Thus, any motion to dismiss aimed at a complaint no longer in effect would therefore be moot. *See Ramirez v. Cnty of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) ("Because the Defendants' motion to dismiss targeted the Plaintiff's First Amended Complaint, which is no longer in effect, we conclude that the motion dismiss should have been deemed moot before the district court granted it.").

Because Defendants' motion to dismiss addresses a complaint no longer in effect, the Court deems it moot.

1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 Defendants' Joint Motion to Dismiss for Failure to State a Claim or to
3 Abstain, ECF No. 5, is **DENIED as moot.**

4 The District Court Executive is directed to enter this Order and furnish
5 copies to Plaintiff and the Defendants' counsel.

6 DATED March 13, 2025.



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Thomas O. Rice
THOMAS O. RICE
United States District Judge